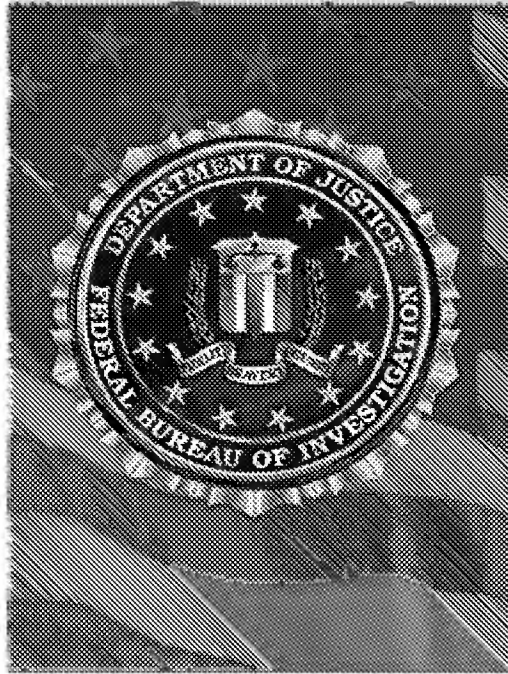


Prepublication Review (PR) Manual



Federal Bureau of Investigation (FBI)

POL05-0001-RMD

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Prepublication Review Manual

**GENERAL INFORMATION: Questions or comments pertaining to this manual
can be directed to:**

HQ FBI /Records Management Division, Division 17

**Record/Information Dissemination Section (RIDS), Government Response and
Prepublication Review Unit**

**(NOTE: This document takes the place of MAOP, Part 1, Section 1-24
PREPUBLICATION REVIEW in its entirety and MAOP, Part 1, Sections 1-26.1 through
1-26.4.)**

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Table of Contents

Scope.....	1
Key Terms and Acronyms.....	2
Roles and Functional Responsibilities.....	3
1. Records Management Division (RMD).....	3
2. Chief Division Counsel or the Office of the General Counsel (OGC)	3
3. Special Agents and Non-Agents	3
Policies.....	4
1. FBI Prepublication Policy.....	4
2. Scope of Prepublication Policy	4
2.1. Oral, Written, or Electronic Disclosures	4
2.2. Extemporaneous Oral Disclosures	4
2.3. Disclosures Not Subject to Prepublication Policy	5
2.4. Prohibited Disclosures	6
2.5. Employee Accountability for Permitted Disclosures.....	7
Procedures and Processes.....	10
1. Employee Submits Prepublication Review Request.....	10
2. RMD Processes Review Request.....	10
3. RMD Response Time.....	11
4. Appealing an Adverse Decision.....	11
Recordkeeping Requirements.....	12

LIST OF APPENDICES

Appendix A: Summary of Legal Authorities.....	A-1
Appendix B: MAOP References.....	B-1
Appendix C: Prepublication Review Information Summary	C-1

Scope

Purpose. To outline specific policy regarding prepublication review and establish requirements that regulate individual conduct.

Background. Every employee occupies a position of special trust and therefore owes a fiduciary duty to the FBI and to the nation to protect the sensitive and often classified information encountered as a result of such position of trust. All information acquired by employees in connection with official FBI duties and all official material to which employees have access are the property of the United States. Employees must surrender upon demand by the FBI, or upon separation from the FBI, all materials containing FBI information that they possess.

Unauthorized disclosure, misuse, or negligent handling of FBI information could impair national security, place human life in jeopardy, result in the denial of due process, obstruct justice, prevent the FBI from effectively discharging its responsibilities, or violate federal law. Therefore, the FBI has established the prepublication review policy described in this Manual. This policy provides program guidance and establishes requirements regulating individual conduct. Before disclosing FBI information outside of official duty requirements, FBI employees must submit the proposed disclosures to the FBI for review. This prepublication review affords the FBI the opportunity to assess whether the proposed disclosure includes prohibited disclosures (see **Policies: 2.4 Prohibited Disclosures**), to advise the submitting employee of any such concerns, and to work with the employee to resolve such concerns. The prepublication review process also enables the FBI to undertake other lawful actions in appropriate cases to protect its mission and operations. This could include, for example, pursuing lawful efforts to prevent a prohibited disclosure, such as seeking an injunction, or to mitigate potential harm from an impending disclosure.

An employee is obligated to comply with prepublication review requirements by virtue of this provision as well as the FBI Employment Agreement (FD-291), which all employees sign as a condition of employment; by analogous forms such as FD-868 signed by task force members, contractors, etc.; by the Classified Information Nondisclosure Agreement (SF 312), which all employees sign as a condition of being granted access to classified information; and by the Sensitive Compartmented Information (SCI) Nondisclosure Agreement (Form 4414), which employees with access to SCI information sign as a condition of such access.

Intended Audience. All FBI employees, contractors, detailees, assignees, Joint Task Force members, interns, or other individuals who, through their relationship with the FBI, have or had access to FBI information.

Key Terms and Acronyms

Employee: An individual who has or has had a position of trust with the FBI by virtue of employment, contract, detail, assignment, joint task force, internship, or other agreement, and through this relationship has or had access to FBI information.

Information: Includes all information acquired from or relating to FBI files or operations, and any other information acquired by virtue of official employment, duties, contract, or status.

Roles and Functional Responsibilities

1. Records Management Division (RMD)

RMD is responsible for providing guidance on all prepublication review issues including those not explicitly covered in this manual. See Procedures and Processes: 2. RMD Processes Review Request.

2. Chief Division Counsel or the Office of the General Counsel (OGC)

Employees who wish to make court appearances or respond to subpoenas in their personal capacities that could require them to divulge FBI information should contact their Chief Division Counsel or the Office of the General Counsel (OGC) for additional guidance. Disclosure of DOJ/FBI information in federal or state proceedings is subject to the provisions of 28 C.F.R. Part 16, Subpart B.

3. Special Agents and Non-Agents

Special Agents may obtain additional assistance on outside employment matters from the Employee Benefits Unit, ASD, and non-Agents may obtain guidance from the Reinvestigation Adjudication Unit, Personnel Security Adjudications Section. Employees assigned to field divisions may obtain guidance on ethical standards from CDCs; employees assigned to FBIHQ divisions may obtain guidance on ethical standards from OGC's Administrative Law Unit.

Policies

1. FBI Prepublication Policy

Employees must not disclose FBI information to unauthorized recipients. Prior to any proposed disclosure (outside of official duty requirements) of FBI information, employees must comply with the FBI prepublication review process as described in this section. Employees who fail to comply with the prepublication review process or who make a prohibited disclosure (see **Policies: 2.4 Prohibited Disclosures**) are subject to administrative action, clearance revocation, discipline, civil suit, and/or criminal sanction, as appropriate.

Compliance with this policy does not relieve employees from the obligation to comply with the FBI's outside employment rules or the Standards of Ethical Conduct for the Executive Branch, including any applicable limitations on compensation.

The FBI prepublication review process does not encompass a proposed disclosure's factual accuracy or grammar. Similarly, completion of the prepublication review process does not constitute an FBI endorsement of the author or the material disclosed.

It is the employee's obligation to seek guidance from Records Management Division (RMD) on all prepublication review issues not explicitly covered in this section. The employee should resolve any doubts about the legality or propriety of a disclosure or the applicability of these procedures in favor of submitting a proposed disclosure for prepublication review.

Each provision of this policy is severable. If a court should determine that any provision is unenforceable, then that provision will be void, but the remainder will continue in full force.

2. Scope of Prepublication Policy

2.1. Oral, Written, or Electronic Disclosures

The FBI prepublication review policy applies to any oral, written, or electronic disclosure of FBI information. The FBI prepublication review policy also applies to disclosures of drafts, initial manuscripts, and similar preliminary works to anyone, including attorneys. The only exception to this rule is for disclosures by an employee who is testifying as a defendant in a criminal case in the United States. (**See Policies: 2.3. Disclosures Not Subject to Prepublication Policy**) In that limited situation, the prepublication review policy does not cover disclosures made during testimony or during privileged conversations between the employee and his/her attorney.

2.2. Extemporaneous Oral Disclosures

By their very nature, completely extemporaneous oral disclosures cannot be reviewed in advance. This does not mean that an employee can disregard the requirements of this section when making oral disclosures. Except in those rare instances where deferring

comment would not be practicable due to unusually compelling circumstances beyond the employee's control, employees must defer comment until they can comply with this policy. If an employee reasonably concludes that deferring comment is not practicable, the employee will not be held accountable for failure to comply with this policy. Such an employee may, however, be subject to postdisclosure administrative action, discipline, and/or criminal sanctions, if warranted by the content of the disclosure.

Example: An SAC is participating in a widely attended social event. A congressman asks about a closed investigation centered in his district. The SAC provides a brief overview of the investigation and, while doing so, discloses classified information. Under these circumstances, the SAC will not be sanctioned for violating the prepublication review policy, but may be sanctioned for disclosing classified information.

2.3. Disclosures Not Subject to Prepublication Policy

2.3.1. Disclosures that clearly have nothing to do with the FBI or its activities, investigations, missions, or operations and that are not otherwise related to any FBI information are not subject to this policy.

Example: A book of children's stories, an article on stamp collecting, a letter to an editor addressing a proposed sewer bond, or an outline of a presentation on the War of 1812 need not be submitted for prepublication review.

2.3.2. Official speeches, writings, and publications made in the performance of official duties are outside the scope of this policy.

2.3.3. Employees who wish to make court appearances or respond to subpoenas in their personal capacities that could require them to divulge FBI information should contact their Chief Division Counsel or the Office of the General Counsel (OGC) for additional guidance. Disclosure of DOJ/FBI information in federal or state proceedings is subject to the provisions of 28 C.F.R. Part 16, Subpart B.

2.3.4. To the extent that proposed disclosures involve classified information, prepublication review processing will be conducted in conformance with 28 C.F.R. Section 17.18.

2.3.5. This policy is intended to be consistent with and does not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 12958; Section 7211 of Title 5, United States Code (governing disclosures to Congress); Section 1034 of Title 10, United States Code, as amended by the Military Whistleblower Protection Act (governing disclosure to Congress by members of the military); Section 2302(b)(8) of Title 5, United States Code, as amended by the Whistleblower Protection Act (governing disclosures of illegality, waste, fraud, abuse or public health or

safety threats); the FBI Whistleblower Protection Act (5 U.S.C. 2303, 28 C.F.R. Part 27) (governing disclosures of illegality, mismanagement, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential government agents); and the statutes which protect against disclosure that may compromise the national security, including Sections 641, 793, 794, 798, and 952 of Title 18, United States Code, and Section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. 783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by the foregoing authorities are incorporated into this policy and are controlling.

- 2.3.6.** Prepublication review is not required for proposed disclosures encompassed by the foregoing authorities. However, any information disclosed pursuant to these authorities continues to be subject to the prepublication policy for any other disclosure.

Example: An FBI employee may make a disclosure of classified FBI information to appropriately cleared personnel of the DOJ OIG pursuant to the FBI Whistleblower Protection Act without prepublication review. The employee may not, however, make an identical disclosure to a reporter without subjecting the disclosure to prepublication review because disclosures to reporters are not protected by those authorities, even if an identical protected disclosure has been made.

2.4. Prohibited Disclosures

Employees shall not disclose the following types of information to unauthorized recipients, except in the performance of official duties or as authorized by RMD:

- 2.4.1.** Information protected from disclosure by the Privacy Act of 1974, as amended
- 2.4.2.** Information that is classified or the disclosure of which could harm national security
- 2.4.3.** Information that reveals sensitive law enforcement, intelligence, counterintelligence, or counterterrorism techniques, sources, or methods of the FBI or any other governmental entity
- 2.4.4.** Information that would reveal grand jury material protected from disclosure by Rule 6(e) of the Federal Rules of Criminal Procedure
- 2.4.5.** Information that would tend to reveal the identity of a confidential source or the identity of a government agency or authority or private institution which furnished information on a confidential basis
- 2.4.6.** Information that relates to any sensitive operational details or the substantive merits of any ongoing or open investigation or case

- 2.4.7. Proprietary information and trade secrets
- 2.4.8. Information pertaining to wiretaps or intercepts, electronic communications (including storage mechanisms), or foreign intelligence protected or regulated by Title III (Title 18, United States Code, Sections 2510-2520) or F.I.S.A. (Title 50, United States Code, Sections 1801-1862)
- 2.4.9. Information pertaining to currency transaction reports regulated or protected by Title 31, United States Code, Section 5313- 5319
- 2.4.10. Tax return information regulated or protected by Title 26, United States Code, Section 6103
- 2.4.11. Information pertaining to contractor bids or proposals or source-selection information before the award of the procurement contract to which the information relates
- 2.4.12. Any other information the disclosure of which is prohibited by law, Executive Order, or regulation
- 2.4.13. Any other information that the FBI would have discretion to withhold from disclosure pursuant to civil discovery obligations, the Freedom of Information Act, Privacy Act, or any other statute, law, or regulation

2.5. Employee Accountability for Permitted Disclosures

- 2.5.1. Disclosures will not be prohibited pursuant to this policy solely because they are critical or disparaging of the FBI, the government, or any individual. Any disclosure by a current employee, however, that adversely affects the ability of the employee to effectively and efficiently fulfill his/her official responsibilities or interferes with the FBI's operations may subject the employee to administrative or disciplinary action for the consequences of the disclosure. Examples of disclosures that are not prohibited under this policy but still may subject the employee to disciplinary action are the disclosure of private grievances and disclosures that significantly impair discipline or harmony among coworkers. These types of disclosures could have detrimental impacts on close working relationships where personal loyalty or confidence is necessary, impede the performance of the employee's duties, or interfere with the regular operations of the FBI. An employee will not be prohibited from making such disclosures but may be held accountable for the consequences of the disclosures.

Example: An ASAC publishes a scathing attack on the management style of his SAC and thereby loses the trust and confidence of the SAC, disrupts unit cohesion, and prejudices the effectiveness of the office. The ASAC may be disciplined for those

consequences even though RMD review of the material was sought and prepublication clearance was obtained before publication.

- 2.5.2.** FBI employees may ordinarily speak or write about matters unrelated to their employment if they are expressing their personal views. However, when expressing such views, employees should make clear that they are stating their personal opinion, not the opinion of the FBI and not their official opinion as an employee of the FBI. Particular care in this regard should be taken if the employee is identified as an FBI employee.

Example: An employee is involved in and makes public statements regarding a neighborhood campaign to prevent the construction of a national superstore. The employee should not volunteer the information of being an FBI employee. If the nature of the employment is already known or becomes known, the employee should affirmatively advise those who know this that any opinions or actions are personal and not the actions or opinions of the FBI.

Example: An employee makes public statements regarding substantial premium increases in one of the health plans available to federal employees. Because the employee's federal employment is relevant to his standing in the matter, he may identify himself as a federal employee eligible for the plan (but not as an FBI employee), but he then should affirmatively advise that he is expressing his personal opinion and not acting on behalf or expressing the opinion of any federal agency.

- 2.5.3.** Certain matters of significant public concern are so closely related to the responsibilities and mission of the FBI that there is a substantial likelihood that any comment on such matters by an FBI employee will be perceived as reflecting the employee's official view as an FBI employee or the views of the agency. Therefore, when communicating on matters closely related to the responsibilities, missions, or operations of the FBI, FBI employees should make absolutely clear that they are expressing their personal opinions. Further, certain employees may be precluded from communicating publicly their personal opinions on particular matters. For example, it may be inappropriate for a senior FBI official to express publicly his/her personal view regarding matters within the jurisdiction of the FBI. This is because, as a practical matter, others are likely to perceive the personal views of a senior management employee possessing substantial policy-making authority as indistinguishable from his/her official position as a senior FBI manager.

Example: A support employee in administration (whose only information comes from media reports) makes public statements regarding a local park widely known for drug trafficking. The employee should not volunteer the information that she is an FBI employee. If the nature of the employee's employment is already known or becomes known, she must affirmatively advise those who know of her employment that she is

Prepublication Review Manual

expressing her personal opinion and not acting on behalf or expressing the opinion of the FBI.

Example: The DAD responsible for the FBI's counterdrug programs should not make public her personal belief that marijuana should be legalized. Notwithstanding any disclaimers she might make, as a practical matter the public may still perceive this as reflecting an official FBI position. Moreover, such a statement may interfere with the DAD's effectiveness in exercising her responsibilities, or the FBI's working relationships with other law enforcement agencies.

Procedures and Processes

1. Employee Submits Prepublication Review Request

Employees must submit the full text of all proposed disclosures of FBI information to RMD at least 30 workdays in advance of the proposed disclosure. Prepublication review submissions must be made in writing even if oral disclosure is contemplated. For disclosures that cannot reasonably be scheduled that far in advance, the employee must submit the material as far in advance as possible. RMD will endeavor to review material in a timely manner, but the FBI prepublication review requirement will not have been satisfied until the review is complete and the employee has been notified. Priority will be given to reviewing materials of temporal significance to a large number of people.

2. RMD Processes Review Request

RMD will conduct the prepublication review, answer questions from employees about the prepublication review process, and review and process all requests as follows:

- 2.1.1. If RMD concludes that no review is required, it will inform the employee in writing.
- 2.1.2. If RMD concludes that review is required, it will conduct the review.
- 2.1.3. RMD may consult or coordinate with any person who can assist in determining how to proceed with the prepublication review process. This may include seeking help to assess the content or potential impact of the proposed disclosure or to initiate appropriate responses to the proposed disclosure.

Example: RMD may provide a copy of a proposed disclosure to FBI employees with specialized knowledge in order to assess whether the disclosure contains classified information.

- 2.1.4. RMD may apprise appropriate FBI management officials of impending disclosures that have the potential to harm FBI operations or that may precipitate media or congressional interest. Text of any proposed disclosure submitted for prepublication review is presumed to be proprietary and shall not be disseminated to any person who does not have an official need to know such information.

Example: An employee submits for review a manuscript that discusses a past FBI/CIA operation that has been the subject of intense congressional review. RMD may seek the assistance of the CIA in reviewing the manuscript. Additionally, RMD may inform the Office of Congressional Affairs (OCA) of the likely publication so that OCA may be prepared for subsequent congressional or press inquiries.

- 2.1.5. If RMD believes the employee has breached or is attempting to breach this policy, the FBI Employment Agreement or analogous agreements, SF-312, or

Form 4414, it will forward a copy of the request, the proposed disclosure, and any other relevant information to the Inspection Division for appropriate action. RMD will also forward a copy to the Security Division and OGC for appropriate action. RMD will continue to process any related request, unless otherwise directed by OGC, the Security Division, or the Inspection Division.

- 2.1.6.** If the proposed disclosure includes material that RMD finds cannot be disclosed, it will notify the employee and propose modifications that would be acceptable. RMD will work with the employee and attempt to resolve all concerns.

3. RMD Response Time

As a general rule, RMD will respond to a request for prepublication review within 30 workdays of receipt of all required materials. (The day of receipt is not counted for purposes of calculating the 30 workday period, but the day of response is included.) Additional time may be necessary for voluminous or technical submissions. If the review requires additional time, RMD will provide periodic progress reports and will advise the employee of the anticipated completion date.

4. Appealing an Adverse Decision

An employee may appeal an adverse decision to the AD, RMD. The AD will act pursuant to a delegation of authority from the Director. The decision of the AD, RMD, is final, except decisions relating to the deletion of classified information may be appealed to the Deputy Attorney General per 28 C.F.R. Section 17.18.

Recordkeeping Requirements

An employee is obligated to comply with prepublication review requirements by virtue of this provision as well as the FBI Employment Agreement (FD-291), which all employees sign as a condition of employment; by analogous forms such as FD-868 signed by task force members, contractors, etc.; by the Classified Information Nondisclosure Agreement (SF 312), which all employees sign as a condition of being granted access to classified information; and by the Sensitive Compartmented Information (SCI) Nondisclosure Agreement (Form 4414), which employees with access to SCI information sign as a condition of such access.

The employee's 67 file number must be entered on the FBI Employment Agreement (FD-291) form. If the 67 number is not indicated on the FD-291, the FD-291 cannot be filed and will be returned. Employees can locate their 67 file numbers by conducting an Employee Self Query in FBINET as follows:

- Select Personnel Data Queries.
- Select Current Personnel Information.
- Your personnel file number is located on the fourth line from the bottom of this page.

Appendix A: Summary of Legal Authorities

The following legal summaries are cited in the manual and provide additional information for understanding the policies and procedures set forth in this manual.

- To the extent that proposed disclosures involve classified information, prepublication review processing will be conducted in conformance with 28 C.F.R. Section 17.18.
- 5 C.F.R. Part 2635 (Standards of Conduct) and 5 C.F.R. Part 3801 (Supplemental Standards of Conduct for Employees of the Department of Justice).
- Employees who wish to make court appearances or respond to subpoenas in their personal capacities that could require them to divulge FBI information should contact their Chief Division Counsel or the Office of the General Counsel (OGC) for additional guidance. Disclosure of DOJ/FBI information in federal or state proceedings is subject to the provisions of 28 C.F.R. Part 16, Subpart B.

Prepublication review is not required for proposed disclosures encompassed by the following authorities. However, any information disclosed pursuant to these authorities continues to be subject to the prepublication policy for any other disclosure. The definitions, requirements, obligations, rights, sanctions, and liabilities created by the following authorities are incorporated into this policy and are controlling. The prepublication policy is intended to be consistent with and does not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by the following:

- Executive Order No. 12958; Section 7211 of Title 5, United States Code (governing disclosures to Congress); Section 1034 of Title 10, United States Code, as amended by the Military Whistleblower Protection Act (governing disclosure to Congress by members of the military); Section 2302(b)(8) of Title 5, United States Code, as amended by the Whistleblower Protection Act (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats); the FBI Whistleblower Protection Act (5 U.S.C. 2303, 28 C.F.R. Part 27) (governing disclosures of illegality, mismanagement, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential government agents); and the statutes which protect against disclosure that may compromise the national security, including Sections 641, 793, 794, 798, and 952 of Title 18, United States Code, and Section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. 783(b)).

The following legal authorities provide guidance with certain prohibited disclosures:

- Information protected from disclosure by the Privacy Act of 1974, as amended
- Information that would reveal grand jury material protected from disclosure by Rule 6(e) of the Federal Rules of Criminal Procedure

Prepublication Review Manual

- Information pertaining to wiretaps or intercepts, electronic communications (including storage mechanisms), or foreign intelligence protected or regulated by Title III (Title 18, United States Code, Sections 2510-2520) or F.I.S.A. (Title 50, United States Code, Sections 1801-1862)
- Information pertaining to currency transaction reports regulated or protected by Title 31, United States Code, Section 5313- 5319
- Tax return information regulated or protected by Title 26, United States Code, Section 6103
- Any other information that the FBI would have discretion to withhold from disclosure pursuant to civil discovery obligations, the Freedom of Information Act and Privacy Act, or any other statute, law, or regulation

Appealing a prepublication decision:

- An employee may appeal an adverse decision to the AD, RMD. The AD will act pursuant to a delegation of authority from the Director. The decision of the AD, RMD, is final, except decisions relating to the deletion of classified information may be appealed to the Deputy Attorney General per 28 C.F.R. Section 17.18.

Appendix B: MAOP References

The following are references to the MAOP, Part 1, that pertain to information in this manual:

- MAOP, Part 1, Section 1-16 (Outside Employment)
- Section 1-18 (Political Activities)
- Section 1-27 (Service as an Expert Witness)
- Section 20-6 (Outside Employment)
- Section 20-28.3 (Administration and Requirements of PTAP)

B-1

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Appendix C: Prepublication Review Information Summary

The FBI established its prepublication review policy in order to safeguard against the unauthorized disclosure of FBI information. Prepublication review permits the FBI to assess whether a proposed disclosure includes FBI information that cannot be disclosed and to work with the employee to resolve such concerns. This review does not, however, encompass an assessment of the propriety of disclosures discussed in paragraph (8) of the MAOP, Part I, 1-24. The FBI will not assert prepublication objections because a proposed disclosure is critical or disparaging of the FBI, the government, or any individual, nor does the FBI conduct review for factual accuracy. Consequently, successful completion of the FBI prepublication review process does not constitute FBI endorsement or approval of a proposed disclosure. It also does not constitute a determination by the FBI that a proposed disclosure is appropriate, nor is it a commitment not to pursue postdisclosure sanctions if warranted by the content of the actual disclosure.

Actual disclosures are subject to postdisclosure review. A disclosure by a current employee that adversely affects the ability of the employee to effectively and efficiently fulfill his/her official responsibilities (including disclosures of private grievances or information that impairs discipline or harmony among coworkers and thus has a detrimental impact on close working relationships where personal loyalty or confidence is necessary, impedes the performance of the employee's duties, or interferes with the regular operations of the FBI) may subject the employee to postdisclosure administrative or disciplinary action.

Compliance with the prepublication review policy does not relieve employees of the obligation to comply with the FBI's outside employment rules (5 C.F.R. Part 2635, Subpart H, Outside Activities; 5 C.F.R. 3801.106; MAOP Part 1, Sections 1-16 and 20-6) or the Standards of Ethical Conduct for the Executive Branch (5 C.F.R. Parts 2635 and 3801; MAOP Part 1, Section 1), including any applicable limitations on compensation and disclosures that amount to use of public office for private gain. Special Agents may obtain additional assistance on outside employment matters from the Employee Benefits Unit, ASD, and non-Agents may obtain guidance from the Reinvestigation Adjudication Unit, Personnel Security Adjudications Section. All employees may obtain guidance on ethical standards from CDCs and the Administrative Law Unit, OGC.